

## Remarks

Applicants respectfully request reconsideration of the present U.S. Patent application as amended herein. Claims 1, 12, 22, and 27 have been amended. No claims have been added or canceled. Thus, claims 1-31 are pending.

### **35 USC §103**

1. Claims 1-5, 8, 10, 12-15 and 20 stand rejected over the combination of Watson (US Patent No. 6,223,209), and Farber (US Patent No. 6,415,280).

Applicants thank the Examiner for the thoughtful reasoning in the Office Action.

Regarding the current rejections, Applicants again respectfully traverse the rejections for reasons discussed previously, but Applicants believe the rejections are moot in light of the foregoing amendments.

In particular, as discussed at the top of page 11 (line 3) of the specification, each independent claim series has been amended to recite determining efficiency ratings for two servers, and in contrast with conventional load balancing types of operation, a communication session is directed to a server having a **worse** efficiency rating if that server has a **higher** predicted reliability. That is, currently recited embodiments recite choosing reliability over communication efficiency. This recited approach to selecting a server is not taught or suggested by the documents relied on by the Office.

Regarding dependent claims 2-5, 8, and 10, the rejections of these claims are not being substantively reviewed at this time as it is necessary to first resolve the understanding and rejection/allowance of claim 1. However, it is noted these claims are allowable for at least the reason as depending from an allowable base claim.

Regarding the rejections of claims 12-15 and 20, these claims are rejected on the same grounds as for claims 1-5, 8 and 10 and hence Applicants submit these claims are allowable for at least the same reasons as discussed above for those claims.

2. Regarding the rejection of dependent claims 7, 17, and 18 over Watson and Farber in view of Freeman (U.S. Patent No. 6,922,724), in addition to Watson and Farber being silent as to where the recited "commonly accessible storage device," it is respectfully submitted that these documents fail to teach or suggest the recited purpose to which the storage is used, namely to store efficiency ratings for use in the underlying base claims. Thus, even if we accept that a common storage may be available, there is no indication how such common storage may be used as is recited. The Office is invited to provide an example of such common knowledge operating as recited, mere existence of a common communication medium is not sufficient to meet what is recited.

3. Dependent claims 11, 21-23, 26-28 and 31 stand rejected as being obvious over Watson and Farber in view of Logan (U.S. Patent No. 6,578,066). To allow prosecution to focus on the allowability of the base independent claims, the rejections of these claims are not being substantively reviewed at this time. However, it is noted these claims are allowable for at least the reason as depending from an allowable base claim.

4. Claims 6, 9, 16 and 19 stand stand rejected as being obvious over Watson and Farber in view of Emens (U.S. Patent No. 6,606,643). To allow prosecution to focus on the allowability of the base independent claims, the rejections of these claims are not

being substantively reviewed at this time. However, it is noted these claims are allowable for at least the reason as depending from an allowable base claim.

Regarding allowed subject matter for claims 24, 25, 29, and 30, since no reason for allowability is present in the Office Action, **the Examiner is invited to call the undersigned** to discuss what feature or features make these claims allowable as such discussion would probably facilitate introducing a new claim series addressing the feature(s) distinguishing over the documents of record.

Conclusion

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1-31 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application. Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,

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